

## REMARKS

Applicants have studied the Office Action dated November 1, 2004 and have made amendments to the claims. It is submitted that the application, as amended, is in condition for allowance. By virtue of this amendment, claims 1-17 are pending. Claims 1, 7, 8, 9, and 15 are amended. Reconsideration and allowance of the pending claims in view of the above amendments and the following remarks is respectfully requested.

In the Office Action, the Examiner:

- (1) acknowledged references in the IDS;
- (2) objected to the Oath/Declaration under 37 CFR 1.67(a) for failing to list all three inventors of the present invention;
- (3) objected to the claims 1 and 9 for informalities;
- (4) rejected claims 1, 2, 5, 7, 15, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. 6,278,387) in view of Selly (U.S. WO 02/09090A2);
- (5) rejected claims 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. 6,278,387) in view of Selly (U.S. WO 02/09090A2), and further in view of Bhadkamkar et al. (U.S. Patent No. 5,893,062);
- (6) rejected claims 6 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. 6,278,387) in view of Selly (U.S. WO 02/09090 A2) and Goldhor et al. (U.S. Patent App. No. 2002/0052967 A1);
- (7) rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. 6,278,387) in view of Selly (U.S. WO 02/09090A2) and Mahfuz ("Packet Loss Concealment for Voice Transmission over IP Networks" Master's Thesis, McGill University, Sept. 2001, pp. 51-56);
- (8) rejected claims 9-11 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. 6,278,387) in view of Selly (U.S. WO 02/09090A2) and Snelgrove et al. (WO 01/74040 A2);
- (9) rejected claim 12 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. 6,278,387) in view of Selly (U.S. WO 02/09090A2) and Snelgrove et al. (WO 01/74040 A2) and further in view of Goldhor et al. (U.S. Patent App. No. 2002/0052967 A1);

- (10) rejected claims 13 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. 6,278,387) in view of Selly (U.S. WO 02/09090A2) and Snelgrove et al. (WO 01/74040 A2) and further in view of Bhadkamkar et al. (U.S. Patent No. 5,893,062).

#### In the Drawings

The Examiner's permission is requested to amend FIG. 6. Page 21, lines 26-27 of the specification refers to "the state diagram '600' of FIG. 6". Currently, an erroneous label "500" appears on FIG. 6 of the application as originally filed.

#### (2) Objection to the Oath/Declaration

As noted above, the Examiner Oath/Declaration for failing to list all three inventors of the present invention. A copy of Applicants' post card and filing receipt indicates that a copy of all three inventors' Oath/Declaration was duly filed with the Application on June 27, 2003. The Oath/Declaration were signed in three, individual, notarized counterparts and fully complies with the requirements of 37 CFR 1.63. Applicants submit that the Examiner's objection to the Oath/Declaration has been overcome and the Examiner's rejection should be withdrawn.

#### (3) Objection to the Claims

As noted above, the Examiner objected to claims 1 and 9 for informalities. Specifically, the word "coupled" appears incorrectly as "couple" in claims 1 and 9. Claims 1 and 9 have been amended and the word "couple" has been replaced with the term "coupled."

#### (4) Rejection under 35 U.S.C. §103(a) Rayskiy in view of Selly

As noted above, the Examiner rejected claims 1, 2, 5, 7, 15, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. Patent No. 6,278,387 B1) in view of Selly (WO 02/09090 A2).

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful. Amended independent claim 1 recites, *inter alia*:

- an audio output module coupled to a single circular fixed-length outbound audio buffer for playing audio therefrom through a speaker, wherein the audio is stored as a series of sequential time-based audio samples, which are portioned into sequential frames;

- a first modulo pointer for modulo indexing into the circular fixed-length outbound audio buffer where a first portion of audio samples is indexed;

- a second modulo pointer for modulo indexing into the circular fixed-length outbound audio buffer where a second portion of the audio samples is indexed so that the first portion and the second portion of the audio samples are sequential in time;

- a cross correlation function for determining a position of maximum correlation between the first portion of the audio samples and the second portion of the audio samples;

- a third modulo pointer for modulo indexing into the circular fixed-length outbound audio buffer at the position of maximum correlation; and

- a SOLA (Synchronized OverLap and Add ) function with a selectable rate variable, the SOLA function operating on the first portion of the audio samples and the second portion of the audio samples with an output of the SOLA function being written in the circular fixed-length outbound audio buffer at a starting position of the third modulo pointer. (emphasis added).

The Rayskiy reference discloses an audio codec with an encoder and a decoder, where the encoder enables compression of an audio signal for transmission and the decoder receives a compressed audio signal for playback. The decoder in Rayskiy has a time scaling module that time stretches or compresses an audio signal as desired using a SOLA algorithm.

As the Examiner correctly states on page 4 of the Office Action, Rayskiy does not teach a first, second, or third modulo pointer or a cross correlation function. On the same page of the Office Action, the Examiner goes on to say that the Selly reference

discloses a first, second, and third modulo pointer and a cross correlation function.<sup>1</sup>  
The Examiner recites 35 U.S.C. § 103(a).

The Selly reference discloses a time scale modification that produces an output signal having a different playback rate but the same pitch as an input digital audio signal. Selly abstract. While it is true the Selly discloses the use of three pointers, the pointers in Selly are not at all similar to, and do not accomplish the object of, the pointers of the present invention.

Selly discloses (p. 9 Lines 15-20) that "In all three buffers, pointers move to the right as samples enter, exit, and are processed. Movement of buffer pointers to the right, i.e. in forward time direction, is referred to as advancing the pointers." Selly has this luxury because it is operating on three independent buffers.

In contrast to Selly, the invention of the instant application operates on only one buffer. Because of this single buffer operation, the present invention cannot advance pointers without overwriting data. In the single buffer system the pointers move to the left which is referred to as "decrementing" the pointers. It is not possible to increment pointers while doing a frame shift or duplicate operation because speech data will be overwritten and corrupted. In fact Selly is teaching away from using SOLA with only one buffer.

The Federal Circuit has consistently held that when a §103 rejection is based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the prior art reference, such a proposed modification is not proper and the *prima facie* case of obviousness can not be properly made. See *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Here the intent, purpose and function of the Selly reference is not to teach a method that updates the global write pointers after frame duplication. It does not teach a method of frame duplication that uses two pointers on the same buffer (r1, r2) which is

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<sup>1</sup> Applicant makes no statement whether such combination is even proper.

necessary to avoid overwriting each other by reversing the write operation. Page 24, lines 18-22 of the instant application. If the present invention utilized two or more separate buffers to store data, as does the Selly reference, the pointers could be incremented as data is written from one buffer to the next. However, in the present invention, the data is on the same buffer, and if a pointer increment approach were applied to the lower r1 pointer it would overwrite redundant data to the r2 buffer. Pointers r1 and r2 are less than a frame length apart. *Id.* Hence, if the sequential data from r1 is written to r2 and the number of writes is greater than the frame length, then at the half frame length position, r1 would be writing the exact same data for the second half frame. The r1 would be overwriting itself in an incremental approach. Hence, the present invention applies a decrement pointer approach to avoid overwriting buffers during the frame replication and eliminates the need for additional buffers. This is not obvious in the context of a non-real time processor using 3 buffers as described by the Rayskiy patent in view of the Selly patent.

Therefore, this combination, as suggested by the Examiner, destroys the intent and purpose of Rayskiy taken alone and/or in view of Selly's teaching of **multiple buffers**. Accordingly, the present invention is distinguishable over Rayskiy taken alone and/or in view of Selly.

Continuing further, when there is no suggestion or teaching in the prior art for that disclosed in the application, the suggestion can not come from the Applicants' own specification. The Federal Circuit has repeatedly warned against using the Applicants' disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings of the prior art. See MPEP §2143 and *Grain Processing Corp. v. American Maize-Products*, 840 F.2d 902, 907, 5 USPQ2d 1788 1792 (Fed. Cir. 1988) and *In re Fitch*, 972 F.2d 160, 12 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). It is accordingly believed to be clear that Rayskiy taken alone and/or in view of Selly does not suggest, teach, nor mention "an audio module coupled to a circular fixed-length outbound audio buffer...a first modulo pointer for modulo indexing into the ... buffer...; a second modulo pointer for modulo indexing into the ... buffer ...; a third modulo pointer for modulo indexing into the ... buffer..." as stated in independent claims 1 and 15 of the instant application.

Claims 1 and 15 are therefore believed to be patentable over the art. Since dependent claims contain all the limitations of the independent claims, dependent claims 2, 5, 7, and 16 are believed to be patentable as well, and the Examiner's rejection should be withdrawn.

Additionally, claim 7 has been amended to replace the term "playback" with the term "loopback." The definition of a "playback" rate is different from a "loopback" rate. Playback denotes non-real time processing, i.e., the data is played back from prerecorded or saved audio data. Page 7, lines 28 and 29. Loopback signifies data that has just been captured on an input buffer in real-time (frame by frame) and is feedback out on the same buffer through the earpiece or speaker to be heard in real time as the audio is being captured.

The objective of the present invention is to provide one person the ability to psychologically coerce a second person to changing their talking rate. This is done by changing the loopback rate at which the second person hears themselves talk through the loopback function. The specification of the instant application describes a method to assess a second person's talking rate, a system and method to adjust that rate up or down based on the first user's talking rate preference, and a method to have the second person's loopback speech played faster or slower as controlled by the first person to set the second person's talking rate. i.e., the first person controls how fast the second person is talking by changing the second person's loopback rate. This psychologically coerces the second person to talk slower or faster.

(5) Rejection under 35 U.S.C. §103(a) Rayskiy in view of Selly and further in view of Bhadkamkar et al.

The Examiner rejected claims 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. Patent No. 6,278,387) in view of Selly (U.S. WO 02/09090 A2), and further in view of Bhadkamkar et al. (U.S. Patent No. 5,893,062).

As the Examiner correctly states on page 6 of the Office action, Rayskiy does not teach the use of “a vocoder for detecting a word rate in the audio loopback path using at least one of: an energy decision metric: a voicing decision metric: and a tonality measure.” The Examiner, on page 7 of the Office action, goes on to combine the Bhadkamkar et al. reference.<sup>2</sup>

For the reasons stated in the previous section of this Amendment entitled “(4) Rejection under 35 U.S.C. § 103(a) Rayskiy in view of Selly”, it is respectfully submitted that the present invention overcomes the Examiner’s rejections with reference to claim 1 and the Rayskiy and Selly references. Because claims 3 and 4 depend from independent claim 1, it is therefore submitted that claims 3 and 4 also overcome the Examiner’s rejections with reference to the Rayskiy and Selly references.

The Bhadkhamar et al. reference teaches modifying an original set of audio data in accordance with a target display rate, then modifying a related original set of video data to conform to the modifications made to the audio data set, such that the modified audio and video data sets are synchronized. Col. 5, lines 50-67. For instance, if the speech rate changes, then the video rate must change in accordance, such that the video gives the appearance that the actors talking and speaking at the right time. Bhadkhamar et al. is not concerned with real-time speech compression or expansion that is adjustable by a listener, as is the present invention. For this reason, Bhadkhamar et al. do not specifically teach why calculating the audio rate using an energy metric reveals the natural talking rate of an individual speaker.

When there is no suggestion or teaching in the prior art for that disclosed in the application, the suggestion can not come from the Applicants’ own specification. The Federal Circuit has repeatedly warned against using the Applicants’ disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings of the prior art. See MPEP §2143 and Grain Processing Corp. v. American Maize-Products, 840 F.2d 902, 907, 5 USPQ2d 1788 1792 (Fed. Cir. 1988) and In re Fitch, 972 F.2d 160, 12

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<sup>2</sup> Applicant makes no statement whether such combination is even proper.

USPQ2d 1780, 1783-84 (Fed. Cir. 1992).

Here the intent, purpose and function of the Bhadkhamar et al. reference is to correlate an audio stream with a video stream. Bhadkhamar et al. do not at all teach using a word rate analysis for playing audio at user selectable rates to enhance the ability of a listener to interpret a talker's speech more effectively. Therefore, there is no suggestion or motivation in Bhadkhamar et al. to use "at least one of: an energy decision metric; a voicing decision metric; and a tonality measure" in an audio module that is "coupled to a circular fixed-length outbound audio buffer" as claimed in claims 1 and 3 of the present invention.

Furthermore, with regard to claim 4 of the instant application, there is no suggestion or motivation in the Bhadkhamar et al. reference to use a word rate to set a selectable rate variable by "using at least one of: an energy decision metric; a voicing decision metric; and a tonality measure" because Bhadkhamar et al. is only interested in aligning an audio stream with a video stream.

The Statute expressly requires that obviousness or non-obviousness be determined for the claimed subject matter as a whole, and the key to proper determination of the differences between the prior art and the present invention is giving full recognition to the invention as a whole. Rayskiy in view of Selly and further in view of Bhadkamkar et al. simply do not teach or suggest the limitations of dependent claims 3 and 4 or independent claim 1, from which claims 3 and 4 depend.

For the foregoing reasons, independent claim 1 distinguishes over Rayskiy alone or in view of Selly and Bhadkamkar et al. Claims 3 and 4 depend from claim 1 and since dependent claims contain all the limitations of the independent claims, claims 3 and 4 distinguish over Rayskiy alone or in view of Selly and Bhadkamkar et al., as well, and the Examiner's rejection should be withdrawn.

(6) Rejection under 35 U.S.C. §103(a) Rayskiy in view of Selly and Goldhor et al.



The Examiner rejected claims 6 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. Patent No. 6,278,387) in view of Selly (U.S. WO 02/09090 A2) and Goldhor et al. (U.S. Patent App. Pub. 2002/0052967 A1).

As the Examiner correctly states on page 8 of the Office action, "Rayskiy does not specifically teach 'comprising a receiver for receiving the selectable rate variable from a second device.'" However, the Examiner goes on to combine the Goldhor et al. reference.<sup>3</sup>

For the reasons stated in the previous section of this Amendment entitled "(4) Rejection under 35 U.S.C. § 103(a) Rayskiy in view of Selly", it is respectfully submitted that the present invention overcomes the Examiner's rejections with reference to claim 1 and the Rayskiy and Selly references. Independent amended claim 15 contains the same limitations as does amended claim 1. It is therefore believed that claim 15 distinguishes over the prior art for at least that reason. Furthermore, claims 6 and 17 depend from independent claims 1 and 15, respectively. It is therefore submitted that claims 6 and 7 also overcome the Examiner's rejections with reference to the Rayskiy and Selly references.

Goldhor et al. discloses an apparatus for preparing media for playback which comprises: (a) a buffer which stores data corresponding to the media; (b) a time-scale modification system that time-scale modifies data output from the buffer at a playback rate; and (c) a rate determiner that determines the playback rate over an interval to control the amount of data in the buffer. Para. 0008.

However, Goldhor et al. is not concerned with "an electronic device for playing audio at user selectable rates", as stated in claim 1 of the instant application. Goldhor et al. describe a device for buffering audio to mask transmission delays. Para 0017. Audio data in Goldhor et al. is not transmitted real time, but is always delayed at least one

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<sup>3</sup> Applicant makes no statement whether such combination is even proper.

second. Para 0019. The delayed data is then rate varied to mask delays in the audio stream. *Id.*

The Statute expressly requires that obviousness or non-obviousness be determined for the claimed subject matter "as a whole," and the key to proper determination of the differences between the prior art and the present invention is giving full recognition to the invention "as a whole."

The limitations taken "as a whole" in independent claims 1 and 15 are not present in Rayskiy alone or in view of Selly and further in view of Goldhor et al.

Very recently, the Federal Circuit again took up the identical question of Obviousness in combining references in the case *In re Sang Su Lee*, No. 00-1158 (January 18, 2002). In this case Board of Patent Appeals rejected all of Applicant's pending claims as obvious under § 103. The Federal Circuit vacated and remanded. Citing two prior art references, the Board stated that a person of ordinary skill in the art would have been motivated to combine the references based on "common knowledge" and "common sense," but it did not present any specific source or evidence in the art that would have otherwise suggested the combination. Here the Examiner on page 8 is citing "*it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Rayskiy in view of Selly by specifically providing the capability, as taught by Goldhor, because it is well known in the art at the time of invention for the purpose of conserving network bandwidth*" without more.<sup>4</sup> The Federal Circuit held that the Board's rejection of a need for any specific hint or suggestion in the art to combine the references was both legal error and arbitrary agency action subject to being set aside by the court under the Administrative Procedure Act (APA). Accordingly, without any suggestion or motivation found in Rayskiy alone or in view of Selly and Goldhor et al., the Examiner has failed to properly establish a prima facie case of obviousness of

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<sup>4</sup> If, however, the Examiner's statements are based on facts within the personal knowledge of the Examiner, the Applicant respectfully requests that the Examiner support these references by filing an affidavit as is allowed under MPEP §707 citing 37 CFR 1.104(d)(2).

the invention as a "whole." The Applicants submit the present invention distinguishes over Rayskiy alone or in view of Selly and Goldhor et al. for at least these reason as well.

For the foregoing reasons, independent claims 1 and 15 distinguish over Rayskiy alone or in view of Selly and Goldhor et al. Claims 6 and 17 depend from claims 1 and 15, respectively, and since dependent claims contain all the limitations of the independent claims, claims 6 and 17 distinguish over Rayskiy alone or in view of Selly and Goldhor et al., as well, and the Examiner's rejection should be withdrawn.

(7) Rejection under 35 U.S.C. §103(a) Rayskiy in view of  
Selly and Mahfuz

The Examiner rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. Patent No. 6,278,387) in view of Selly (U.S. WO 02/09090 A2), and Mahfuz ("Packet Loss Concealment for Voice Transmission over IP Networks" Master's Thesis, McGill University, Sept. 2001, pp. 51-56).

As an initial mater, Applicants note that while Mahfuz is being cited, this reference was not initialed as being considered by the Examiner on the PTO-1449 form attached to the Office Action dated November 1, 2004. Applicants respectfully request that the Examiner consider Mahfuz and then attach to the next correspondence another PTO-1449 form indicating that this reference has been considered.

As the Examiner correctly states on page 9 of the Office action, Rayskiy does not teach "a copying function for inserting a copy of the first portion the audio samples in between the first portion and the second portion of the audio samples so as to be sequential in time there between." However, the Examiner goes on to combine the Mahfuz reference.<sup>5</sup>

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<sup>5</sup> Applicant makes no statement whether such combination is even proper.

For the reasons stated in the previous section of this Amendment entitled "(4) Rejection under 35 U.S.C. § 103(a) Rayskiy in view of Selly", it is respectfully submitted that the present invention overcomes the Examiner's rejections with reference to claim 1 and the Rayskiy and Selly references. Furthermore, claim 8 depends from independent claims 1. It is therefore submitted that claim 8 also overcomes the Examiner's rejection with reference to the Rayskiy and Selly references.

The Statute expressly requires that obviousness or non-obviousness be determined for the claimed subject matter "as a whole," and the key to proper determination of the differences between the prior art and the present invention is giving full recognition to the invention "as a whole."

The limitations taken "as a whole" in independent claim 1 is not present in Rayskiy alone or in view of Selly and Mahfuz.

Very recently, the Federal Circuit again took up the identical question of Obviousness in combining references in the case *In re Sang Su Lee*, No. 00-1158 (January 18, 2002). In this case Board of Patent Appeals rejected all of applicant's pending claims as obvious under § 103. The Federal Circuit vacated and remanded. Citing two prior art references, the Board stated that a person of ordinary skill in the art would have been motivated to combine the references based on "common knowledge" and "common sense," but it did not present any specific source or evidence in the art that would have otherwise suggested the combination. Here the Examiner on page 8 is citing "*it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Rayskiy in view of Selly by specifically providing the features, as taught by Mahfuz, because it is well known in the art at the time of invention as a standard technique for expanding the time scale using SOLA*" without more.<sup>6</sup> The Federal Circuit

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<sup>6</sup> If, however, the Examiner's statements are based on facts within the personal knowledge of the Examiner, the Applicant respectfully requests that the Examiner support these references by filing an affidavit as is allowed under MPEP §707 citing 37 CFR 1.104(d)(2).

held that the Board's rejection of a need for any specific hint or suggestion in the art to combine the references was both legal error and arbitrary agency action subject to being set aside by the court under the Administrative Procedure Act (APA). Accordingly, without any suggestion or motivation found in Rayskiy alone or in view of Selly and Mahfuz, the Examiner has failed to properly establish a prima facie case of obviousness of the invention as a "whole." The Applicants submit the present invention distinguishes over Rayskiy alone or in view of Selly and Mahfuz for at least these reason as well.

For the foregoing reasons, independent claim 1, as amended, distinguishes over Rayskiy alone or in view of Selly and Mahfuz. Claim 8 depends from claim 1, and since dependent claims contain all the limitations of the independent claims, claim 8 distinguishes over Mahfuz, as well, and the Examiner's rejection should be withdrawn.

(8) Rejection under 35 U.S.C. §103(a) Rayskiy in view of  
Selly and Snelgrove et al.

The Examiner rejected claims 9-11 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. Patent No. 6,278,387) in view of Selly (U.S. WO 02/09090 A2), and Snelgrove et al. (WO 01/74040 A2).

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful. Amended independent claim 1 recites:

A first wireless messaging device for playing audio at user selectable rates comprising:

a loopback path to provide user definable speed adjustment in audio feedback via a loopback rate to a user talking into a wireless messaging device, wherein the loopback circuit includes an audio output module coupled to a circular outbound audio buffer for playing audio for the user to hear therefrom; and

a user interface for adjusting the loopback rate. (emphasis added)

The Rayskiy reference discloses an audio codec with an encoder and a decoder, where the encoder enables compression of an audio signal for transmission and the decoder receives a compressed audio signal for playback. The decoder in Rayskiy has a time scaling module that time stretches or compresses an audio signal as desired using a SOLA algorithm.

As the Examiner correctly states on page 10 of the Office Action, Rayskiy does not teach "*talking into a wireless messaging device*." On page 11 of the Office Action, the Examiner goes on to say that the Snelgrove reference "discloses a voicemail system for wireless systems the [sic] uses variable playback rates."<sup>7</sup> The Examiner recites 35 U.S.C. § 103(a).

The Snelgrove reference discloses a voicemail system that includes a voicemail client, a voicemail server, and a base station. Page 4, line 10 through page 5, line 30. The voicemail server and voicemail client cooperate with the base station to determine appropriate times to transfer voicemails over a wireless local loop and thereby free up bandwidth. Snelgrove et al. abstract. While it is true that the Snelgrove reference also teaches variable playback rates for the voicemails (page 1, line 28 through page 11, line 1), Snelgrove is not at all concerned with "wireless messaging devices for playing audio at user selectable rates" and does not show or suggest "a loopback path to provide user definable speed adjustment in audio feedback via a loopback rate," as recited in claim 9 of the instant application. Instead of teaching a real-time loopback path, Snelgrove teaches away from the real-time compression or expansion concept of the present invention and shows a voicemail system that stores voicemails until sufficient bandwidth is available on the system. Page 7, lines 2-19.

The Federal Circuit has consistently held that when a §103 rejection is based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the prior art reference, such a proposed modification is not proper and the *prima facie* case of obviousness can not be properly made. See *In re Gordon*, 733

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<sup>7</sup> Applicant makes no statement whether such combination is even proper.

F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

It is therefore submitted that claim 9 distinguishes over Rayskiy in view of Selly and Snelgrove et al. and the Examiner's rejections should be removed.

For the foregoing reasons, independent claim 9 distinguishes over Rayskiy alone or in view of Selly and Snelgrove et al. Claims 10 and 11 depend from claim 9, and since dependent claims contain all the limitations of the independent claims, claims 10 and 11 distinguishes over Rayskiy alone or in view of Selly and Snelgrove et al., as well, and the Examiner's rejection should be withdrawn.

(9) Rejection under 35 U.S.C. §103(a) Rayskiy in view of Selly and Snelgrove and further in view of Goldhor et al.

The Examiner rejected claim 12 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. Patent No. 6,278,387) in view of Selly (U.S. WO 02/09090 A2), and Snelgrove et al. (WO 01/74040 A2) and further in view of Goldhor et al. (U.S. Patent App. Pub. 2002/0052967 A1).

For the reasons stated in the previous section of this Amendment entitled "(8) Rejection under 35 U.S.C. § 103(a) Rayskiy in view of Selly and Snelgrove et al.", it is respectfully submitted that the present invention overcomes the Examiner's rejections with reference to claim 9 and the Rayskiy, Selly, and Snelgrove references. Claim 12 ultimately depends from independent claim 9. It is therefore submitted that claim 12 also overcomes the Examiner's rejections with reference to the Rayskiy, Selly, and Snelgrove references.

Goldhor et al. discloses an apparatus for preparing media for playback which comprises: (a) a buffer which stores data corresponding to the media; (b) a time-scale modification system that time-scale modifies data output from the buffer at a playback rate; and (c) a rate determiner that determines the playback rate over an interval to

control the amount of data in the buffer. Goldhor, para. 0008.

However, Goldhor et al. is not concerned with a messaging device with “a loopback path to provide user definable speed adjustment in audio feedback via a loopback rate to a user...”, as stated in claim 9 of the instant application. Goldhor et al. describe a device for buffering audio to mask transmission delays. Goldhor, para 0017. Audio data in Goldhor et al. is not transmitted real time, but is always delayed at least one second. Para 0019. The delayed data is then rate varied to mask delays in the audio stream. *Id.*

The Federal Circuit has consistently held that when a §103 rejection is based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the prior art reference, such a proposed modification is not proper and the *prima facie* case of obviousness can not be properly made. See *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

For the foregoing reasons, independent claim 9 distinguishes over Rayskiy alone or in view of Selly and Snelgrove and further in view of Goldhor et al. Claim 12 ultimately depends from claim 9, and since dependent claims contain all the limitations of the independent claims, claim 12 distinguishes over Rayskiy alone or in view of Selly and Snelgrove and further in view of Goldhor et al., as well, and the Examiner's rejection should be withdrawn.

(10) Rejection under 35 U.S.C. §103(a) Rayskiy in view of Selly, Snelgrove et al.  
and further in view of Bhadkamakar et al.

The Examiner rejected claims 13 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Rayskiy (U.S. Patent No. 6,278,387) in view of Selly (U.S. WO 02/09090 A2), Snelgrove et al. (WO 01/74040 A2), and further in view of Bhadkamakar et al. (U.S. Patent No. 5,893,062).

As stated by the Examiner on page 13, claims 13 and 14 contain limitations similar to those of claims 3 and 4. For the reasons stated in the previous section of this



Amendment entitled "(5) Rejection under 35 U.S.C. §103(a) Rayskiy in view of Selly and further in view of Bhadkamkar et al.", it is respectfully submitted that the present invention overcomes the Examiner's rejections with reference to claims 3 and 4. Because claims 13 and 14 contain similar limitations to claims 3 and 4, it is therefore submitted that claims 13 and 14 also overcome the Examiner's rejections with reference to the Rayskiy and Selly references.

### **CONCLUSION**

The remaining cited references have been reviewed and are not believed to affect the patentability of the claims as amended.

In this Response, Applicants have amended certain claims. In light of the Office Action, Applicants believe these amendments serve a useful clarification purpose, and are desirable for clarification purposes, independent of patentability. Accordingly, Applicants respectfully submit that the claim amendments do not limit the range of any permissible equivalents.

Applicants acknowledge the continuing duty of candor and good faith to disclosure of information known to be material to the examination of this application. In accordance with 37 CFR §1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment are limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by the Applicants and their attorneys.

Applicants respectfully submit that all of the grounds for rejection stated in the Examiner's Office Action have been overcome, and that all claims in the application are allowable. No new matter has been added. It is believed that the application is now in condition for allowance, which allowance is respectfully requested.

It is believed that no fee is due with this Amendment. However, if any fees are due with


respect to Sections 1.16 or 1.17, please charge to the deposit account of the undersigned firm, Acct. No. 50-1556.

**PLEASE CALL** the undersigned if that would expedite the prosecution of this application.

Respectfully submitted,

Date: February 1, 2005

By:

  
\_\_\_\_\_  
Jon Gibbons, Reg. No. 37,333  
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Please Direct All Future Correspondence to Customer Number **23334**

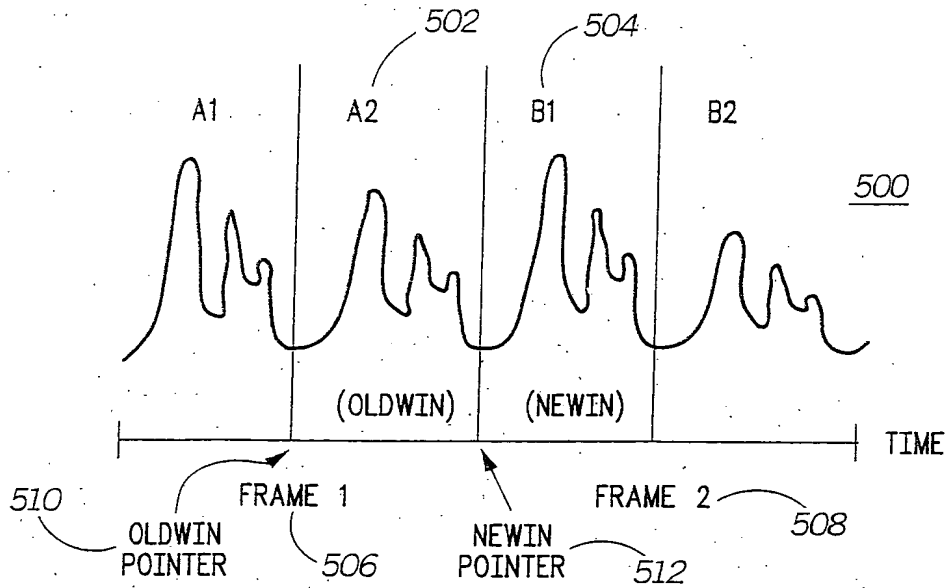
### **IN THE DRAWINGS**

The Examiner's permission is requested to make the following changes:

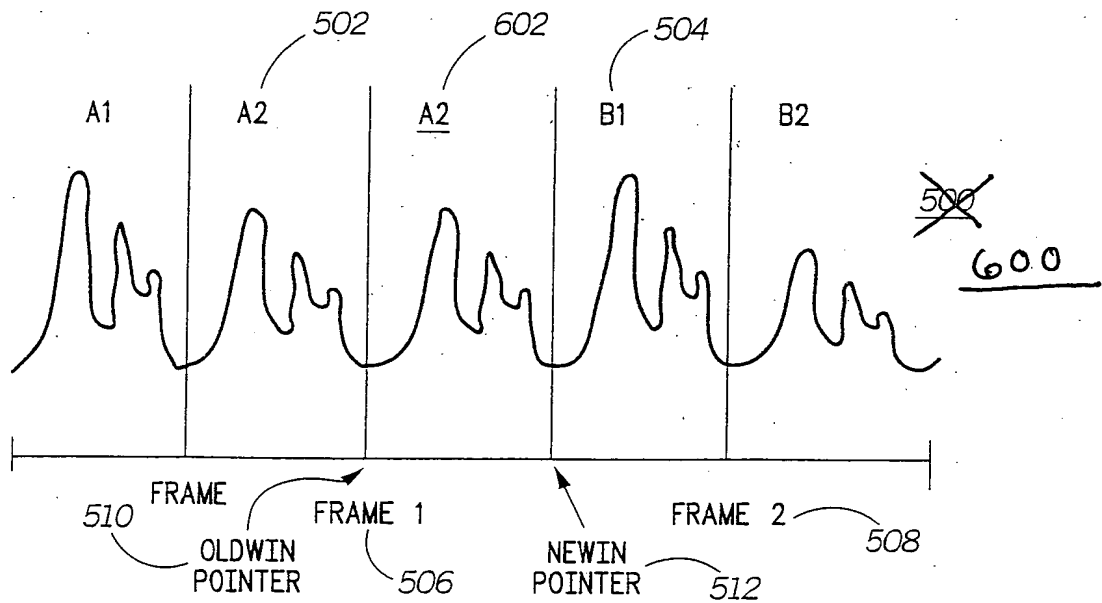
- FIG. 6 change reference "500" to "600"

As required under 37 CFR 1.84 "Annotated Sheet Showing Changes" and Replacement Sheet for Figure 6 is attached hereto.

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**FIG. 5**



**FIG. 6**